

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF JANUARY 31 – FEBRUARY 1, 2013

Prepared on December 19, 2012

ITEM NUMBER: 8

SUBJECT: Agricultural Regulatory Program Update – Enrollment and Annual Compliance Form

SUMMARY

This is an information item to update the Board regarding implementation of the Agricultural Order R3-2012-0011, specifically activities related to enrollment, the Annual Compliance Form, and upcoming requirements. As described in the July and September 2012 Executive Officer’s Report to the Board, staff continues to work with growers to submit regulatory information using the Water Board’s GeoTracker data management system. Staff has also continued to hold workshops for growers and provide other assistance opportunities to help growers achieve compliance. These efforts have resulted in a growing number of farms and acreage enrolled in the program, and an increasing number of growers successfully reporting information to the Water Board. As part of this item, staff will present an overview of the Annual Compliance Form.

The Board may also discuss the following topics during this item including, but not limited to:

- Responsibility for compliance with the Agricultural Order: owners *and* operators
- Proprietary information: procedures for growers to submit proprietary information and procedures for staff to respond to public requests for information

Enrollment

Since November 2010, growers enroll in the Agricultural Order using the electronic-Notice of Intent (eNOI) in the Water Board’s GeoTracker data management system. Table 1 below includes enrollment statistics for the Agricultural Order, as of December 2012. Current enrollment includes approximately 419,872 acres, which reflects both new enrollments and terminations, resulting in a net increase of approximately 23,589 acres since July 2012. In addition, there has been a net increase of approximately 328 individual farms now represented in GeoTracker. Since the launch of the eNOI in 2010, enrollment in the Agricultural Order has experienced a steady increase over time and is now at an all-time high.

Table 1. Agricultural Order Enrollment Statistics

Central Coast Region Irrigated Agriculture Total Estimated Acreage	~435,000 acres
Agricultural Order Total Enrolled Acreage	~419,872 acres (~94% of estimated total)

	(~408,872 acres) Represented in eNOI	(~11,000 acres) Enrolled pre-2010, ~189 Growers have not submitted eNOI ¹ .
Total eNOI Submittals	1739 eNOI Submittals or 4196 farms/ranches	

¹The number of growers and acreage enrolled pre-2010 but not represented in eNOI is currently under review.

Table 1 also identifies ~11,000 acres for growers who have not complied with the requirement to submit an updated eNOI, nor have submitted termination forms that would indicate they are no longer farming. On November 15, 2010, staff issued these (and all) growers a Water Code Section 13267 letter requiring an updated eNOI by January 31, 2011. On September 15, 2011, staff subsequently issued these growers a Notice of Violation letter for failure to respond to the November 15, 2010 letter, requiring that an e-NOI be submitted by October 1, 2011. Some correspondence resulted in mail being returned unopened to our office. Staff is evaluating next steps to take regarding this group of growers. After a variety of attempts to locate and contact the owners or operators, staff will likely conclude that these growers are not operating or not operating at these locations any longer. As such, staff may recommend that the Executive Officer terminate enrollment for these growers in the Agricultural Order.

If the Executive Officer terminates enrollment in the Agricultural Order for these growers, they will no longer be authorized to discharge any waste regulated by the Order, such as fertilizers, pesticides or sediment. If there is a discharge, the Executive Officer may request a report of waste discharge and propose individual waste discharge requirements to authorize discharges from these operations.

Annual Compliance Form

As of December 19, 2012, growers have submitted Annual Compliance Forms for approximately 1615 farms/ranches. This includes approximately 333 submittals for Tier 1 farms where the submittal of the Annual Compliance Form is optional and not required. Compliance for Tier 2 and Tier 3 farms is approximately 1282 out of 1914 farms/ranches (67%). The rates of submittals increased approaching the December 1, 2012 due date and growers have continued to submit the Annual Compliance Form even after the due date. Staff anticipates late submittals will raise the percentage of Tier 2 and Tier 3 growers submitting their forms during the remainder of December 2012 and in January 2013. Staff will consider next steps to improve the number of growers complying with the requirement to submit an Annual Compliance Form, including sending out Notices of Violation directly to those who were required, but failed, to submit an Annual Compliance Form by December 1, 2012.

In preparation for submittal of the Annual Compliance Form, and similar to the outreach for submittal of the eNOI, staff held five Annual Compliance Form workshops in various parts of the region and offered assistance in both Spanish and English in coordination with the Monterey County Office of Education and local colleges. Staff also provided assistance to hundreds of growers in person and over the phone. An example Annual Compliance form is included in Attachment 1.

One of the most common questions that growers have about the content of the Annual Compliance Form is: "How does the Water Board protect proprietary information reported to the GeoTracker data management system?" Consistent with the intent of the Agricultural Order (Condition 65), the Annual Compliance Form provides the opportunity for growers to identify any section that contains information related to trade secrets or secret processes which are exempt from public disclosure pursuant to Water Code §13267, including an explanation of how those portions of the reports are exempt from public disclosure. As soon as a grower identifies the inclusion of trade secret or secret processes in the reported information, the Water Board can efficiently protect it from public disclosure.

At this time, Agricultural Regulatory Program in GeoTracker is not yet accessible to the public via the Internet. If any member of the public wants to review any information reported in the Annual Compliance Form, they must first submit a Public Records Act (PRA) request to review the public records maintained by the Water Board. As stated in Condition 65 of the Agricultural Order, Water Board staff will notify the grower prior to making any portion of the Annual Compliance Form identified by the grower as exempt from public disclosure, available for public inspection. This provides additional opportunity for the grower to justify the exemption and submit a complete report with those portions that are exempt in redacted form. The Water Board carefully reviews all PRA requests to ensure that we comply with California Privacy Laws and requirements related to trade secrets and other protected information (e.g. private resident addresses).

Groundwater Monitoring

The next requirement due for the Agricultural Order is groundwater monitoring. By December 31, 2012, all growers who chose individual groundwater monitoring, must sample the primary irrigation well and any drinking water wells on their farm, or submit existing nitrate data if available. At this time, staff is working with laboratories and technical assistance providers to assist growers with compliance. In addition, as discussed in the September 2012 Executive Officer's Report to the Board, the Water Board also established a grant project using \$10,000 in PG&E Settlement Funds to provide free groundwater sampling and laboratory analytical services to small and/or economically disadvantaged growers who qualify as "Limited Resource Farmers/Ranchers or Socially Disadvantaged Operators" as defined by the U.S Department of Agriculture. As of December 19, 2012, the grant project has provided growers with free sampling and analyses for more than 70 groundwater wells. Staff will provide an update to the Board on the status of the groundwater monitoring requirements at the March 2013 Board Meeting.

ATTACHMENTS

1. Example Annual Compliance Form